



October 31, 2017

The Honorable Nicholas G. Garaufis  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

Re: *Batalla Vidal, et al., v. Duke, et al.*, No. 16-cv-4756 (NGG) (JO)  
*State of New York., et al. v. Trump, et al.*, No. 17-cv-5228 (NGG) (JO).

Dear Judge Garaufis:

The *Batalla Vidal* Plaintiffs and Plaintiff States oppose Defendants' proposed schedule for resolving the remaining arguments presented in their Motion to Dismiss filed on October 27, 2017. The interests of judicial economy and speedy resolution of this matter would be better served by retaining the Court's original briefing schedule.

This Court's original schedule will allow the parties' briefing to take into account necessary threshold questions, most significantly whether the Administrative Record filed on October 6, 2017, ECF No. 77-1, constitutes the complete Administrative Record for review. Defendants' motion to dismiss contends that the Administrative Record is complete and denies the role of the Attorney General in the decision to terminate DACA without explaining their prior contrary statements. *See* Defs.' Mem., ECF No. 95-1 at 22-23, 25-28. Moreover, Defendants argue that this Court is tasked with assessing Plaintiffs' arbitrary and capricious claim under the Administrative Procedure Act based on the administrative record. Defs.' Mem., ECF No. 95-1 at 23. Defendants have also asked the Court of Appeals to bar this Court's order to complete the Administrative Record via their mandamus petition. *See* Defs.' Mandamus Pet., No. 17-3345 (2d Cir. 2017) at 4. It would be inefficient for this Court to preliminarily resolve the remaining portion of Defendants' motion to dismiss before receiving guidance from the Court of Appeals. It would be error for this Court to rule on Defendants' motion without first resolving whether the Administrative Record is complete. *See Dopico v. Goldschmidt*, 687 F.2d 644, 654 (2d Cir. 1982).

For these reasons, Plaintiffs respectfully request that this Court retain its original briefing schedule or, if it seeks resolution of Defendants' motion earlier, delay further briefing until the record-completeness issues have been resolved.

Respectfully submitted,

*/s/ Joshua A. Rosenthal*

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